

**SECTION 1 - ADDENDUM TO 52.212-4, CONTRACT TERMS AND CONDITIONS -  
COMMERCIAL ITEMS (MAR 2009)**

Open Market Item: This order is for a commercial item subject to the terms and conditions of FAR 52.212-4, Contract Terms and Conditions -- Commercial Items, incorporated by reference; FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes and Executive Orders, attached to this order; and any additional terms and conditions included below as addenda to 52.212-4.

This order incorporates the following FAR and NASA FAR Supplement (NFS) clauses by reference, with the same force and effect as if they were given in full text. Clauses incorporated by reference which require a fill-in by the Government, include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of a clause may be accessed electronically at this/these address(es):

FAR: <http://www.acqnet.gov/far/>

NFS: <http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>

- 1.1 1852.219-76 NASA 8 Percent Goal.**
- 1.2 1852.223-70 Safety and Health**
- 1.3 1852.223-71 Frequency Authorization**

**1.4 1852.215-84 OMBUDSMAN.**

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, Cynthia C. Lee, direct inquires to the Office of Procurement Deputy Director, NASA Langley Research Center, Mail Stop 134, Hampton, VA 23681-2199; phone (757)864-2426; facsimile (757)864-8541. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202-358-0445, facsimile 202-358-3083, e-mail [james.a.balinskas@nasa.gov](mailto:james.a.balinskas@nasa.gov). Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

**1.5 1852.225-70 EXPORT LICENSES. (FEB 2000)**

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at NASA Langley Research Center, where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

#### **1.6 LaRC 52.204-91 SECURITY PROGRAM/NON-U.S. CITIZEN EMPLOYEE ACCESS REQUIREMENTS (FEB 2007)**

Access to the LaRC by non-U.S. citizen employees, including those in permanent resident alien status, shall be approved in accordance with NPR 1371.2A, " Requirements for Processing Requests for Access to NASA Installations or Facilities by Foreign Nationals or U.S. Citizens Who are Reps of Foreign Entities". Processing requires advance notice of a minimum of 20 days depending on the nationality of the non-U.S. citizen or foreign representative. Access authorization shall be for a maximum of one year and must be re-evaluated annually. Non-U.S. citizen employees or foreign representatives must be under escort at all times while on Center (by a NASA Civil Servant or permanently badged contractor) unless otherwise approved by the International Visitors Coordinator (IVC).

(End of Clause)

#### **1.7 LaRC 52.211-99 SPECIAL REQUIREMENTS FOR SERVICE CONTRACTS (APR 2007)**

(a) Inherently Governmental Functions - No inherently government functions as defined in FAR 2.101 and FAR 7.5 shall be performed by the contractor under this NASA LaRC contract. Contractor employees shall not participate in any deliberations or meetings intended to exercise an inherently governmental function. All final determinations such as binding the United States to take or not to take some action, selecting program priorities, and providing direction to Federal employees shall be made by the government. The contractor shall immediately notify the Contracting Officers Technical Representative (COTR) and the Contracting Officer if performance of an activity would result in the performance of an inherently governmental function.

(b) Non-Personal Services Contract - In accordance with FAR 37.101, this contract is a non-personal services contract in that the contractor personnel rendering the services shall not be subject, either by the contract's terms or by the manner of its administration, to the continuous supervision and control of a Government officer or employee. The contractor shall immediately notify the COTR and the Contracting Officer if, through contract administration, the actions of a government employee will result in the performance of a personal services contract.

(c) Identification of Contractor Personnel - All contractor personnel who attend meetings, answer government telephones, use a nasa.gov e-mail address, or work in situations where their actions could be construed as acts of Government officials shall clearly identify themselves as contractor personnel. Contractor employees shall never identify themselves as representing NASA but rather shall identify themselves as being under contract to NASA. Additionally, all contractor work spaces located on NASA LaRC shall be clearly identified.

(d) Marking of Reports - The contractor shall mark all documents or reports produced under this contract with the contractor name, contract number, and task order number if applicable.

**1.8 LaRC 52.211-104 OBSERVATION OF REGULATIONS AND IDENTIFICATION OF CONTRACTOR'S EMPLOYEES (FEB 2007)**

(a) Observation of Regulations--In performance of that part of the contract work which may be performed at Langley Research Center (LaRC) or other Government installation, the Contractor shall require its employees to observe the rules and regulations as prescribed by the authorities at LaRC or other installation including all applicable Federal, NASA and Langley safety, health, environmental and security regulations.

(b) Identification Credentials--At all times while on LaRC property, the Contractor shall require its employees, subcontractors and agents to wear credentials issued by NASA LaRC. Contractors will be held accountable for these credentials, and may be required to validate its active employees on an annual basis with the NASA LaRC Security Office. Immediately upon employee termination or contract completion, badges shall be returned to the NASA LaRC Badge and Pass Office. It is agreed and understood that all NASA identification badges remain the property of NASA and the Government reserves the right to invalidate such badges at any time.

(c) Employee Out Processing--The Contractor shall ensure that all employees who are terminated or no longer connected with work being performed under this contract are out processed through the LaRC Badge and Pass Office. Badges and keys must be accounted for and returned.

(End of Clause)

**1.9 52.217-5 EVALUATION OF OPTIONS (JULY 1990)**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

**1.10 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor prior to contract expiration. Preliminary notice is not required.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed sixty (60) months.

(End of clause)

**1.11 52.232-18 AVAILABILITY OF FUNDS (APR 1984)**

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

## SECTION 2 - 52.212-5 ATTACHMENT

### 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. (DEC 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.222-50, Combating Trafficking in Persons (Feb 2009)
- (2) 52.233-3, Protest After Award (Aug 1996)
- (3) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995)
- (2) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (July 2005)(if the offeror elects to waive the preference, it shall so indicate in its offer)
- (3) (i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003)
- (4) 52.219-8, Utilization of Small Business Concerns (May 2004)
- (5) 52.219-14, Limitations on Subcontracting (Dec 1996)
- (6) 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2009)
- (7) 52.222-3, Convict Labor (June 2003)
- (8) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Aug 2009)
- (9) 52.222-21, Prohibition of Segregated Facilities (Feb 1999)
- (10) 52.222-26, Equal Opportunity (Mar 2007)
- (11) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)
- (12) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998)
- (13) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)
- (14) 52.225-1, Buy American Act—Supplies (Feb 2009)
- (15) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008)
- (16) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003)

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.222-41, Service Contract Act of 1965, as Amended (Nov 2007)
- (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989)
- (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Nov 2006)
- (4) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (Nov 2007)
- (5) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements (Feb 2009)

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the

simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
- (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct
- (ii) 52.219-8, Utilization of Small Business Concerns (in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (iii) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009
- (iv) 52.222-26, Equal Opportunity
- (v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
- (vi) 52.222-36, Affirmative Action for Workers with Disabilities
- (vii) 52.222-41, Service Contract Act of 1965
- (viii) 52.222-50, Combating Trafficking in Persons. Flow down required in accordance with paragraph (f) of FAR clause 52.222-50.
- (ix) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment- Requirements
- (x) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Service-Requirements
- (xi) 52.222-54, Employment Eligibility Verification
- (xii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations
- (xiii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels. Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)